

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 2493 – SB 2371

April 10, 2012

SUMMARY OF AMENDMENT (016020): Deletes all language after the enacting clause. Replaces the existing Class B felony offense of “trafficking for sexual servitude” with “trafficking a person for a commercial sex act” and adds the attempt to subject, benefit from, or attempt to benefit from another person’s provision of a commercial sex act. If the victim is under the age of 13, or if the offense occurs on the ground or facilities or within 1,000 feet of a public or private school, secondary school, preschool, child care agency, public library, recreational center, or public park, the violation is a Class A felony. Creates a Class C felony offense for a person to advertise commercial sexual abuse of a minor if the person knowingly sells or offers to sell an advertisement that would appear to a reasonable person to be for the purpose of engaging in what would be a commercial sex act with a minor. Authorizes a minimum fine of \$10,000 in addition to any period of incarceration for violation. Defines “advertisement” as a notice or an announcement in a public medium promoting a product, services, or event, or publicizing a job vacancy. Defines “commercial sex act” as any sexual act for which something of value is given or received. Defines “minor” as an individual who is less than 18 years old. Specifies that it is not a defense that the person did not know the age of the minor depicted in the advertisement. Requires the defendant to prove by a preponderance of the evidence, that at the time of the offense, the defendant made a reasonable attempt to ascertain the true age of the minor appearing in the advertisement. Requires a person who is convicted of a commercial sex act offense to register with the Tennessee Bureau of Investigation (TBI) pursuant to the Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification and Tracking Act of 2004. Elevates the offense to a Class A felony if the victim is a child between 13 and 15 years of age.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures - \$73,000/Incarceration*

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Unchanged from the original fiscal note.

Assumptions applied to amendment:

- According to the Department of Correction (DOC), there has been an average of 0.33 admissions in each of the past three years for trafficking for sexual servitude offenses. Changing the name of the offense and adding the attempt to subject, benefit from, or attempt to benefit from another person’s provision of a commercial sexual act will not

have a significant impact to the number of admissions to DOC. No significant fiscal impact for these Class B offenses.

- DOC assumes there will be one offender every three years who will receive a Class A felony rather than a Class B felony due to the age of the victim and will serve additional time on their sentence.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. No significant incarceration cost increase will occur due to population growth in this period. The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender every three years serving additional time on their sentence.
- According to DOC, the average operating cost per offender per day for calendar year 2012 is \$61.36. The average post-conviction time served for a Class B felony is 5.43 years (1,983.31 days) and for a Class A felony is 15.30 years (5,588.33 days). This bill will result in an offender, convicted of a commercial sex act involving a child between the ages of 13 and 15, serving an additional 9.87 years (15.30 years – 5.43 years).
- The additional cost of increasing the average sentence length by 9.87 years (3,605.02 days) is \$221,204.03 (\$61.36 x 3,605.02 days). The annualized cost per conviction is \$72,997.33 (0.33 annual number of convictions x \$221,204.03).
- Due to the small number of offenders no recidivism discount has been applied for these offenses.
- No additional incarceration costs will be incurred by DOC for offenders who fail to register on the sex offender registry (SOR) with TBI. Such violation is punishable as a Class E felony.
- The amendment specifies in (c) that in a prosecution under this statute, it is not a defense that the defendant did not know the age of the minor depicted in the advertisement. The defendant must prove by a preponderance of the evidence that at the time of the offense the defendant made a reasonable bona fide attempt to ascertain the true age of the minor appearing in the advertisement by requiring, prior to publication of the advertisement, production of a driver's license, marriage license, birth certificate, or other governmental or educational identification card or paper of the minor depicted in the advertisement and did not rely solely on oral or written allegations of the minor's age or the apparent age of the minor. According to DOC, because of the standard set in this amendment there will not be a significant number of new Class C convictions.
- No significant fiscal impact to the TBI to make changes to the SOR. Any cost can be accommodated within existing resources without an increased appropriation or reduced reversion.
- No significant fiscal impact to the District Public Defenders Conference or the District Attorney Generals Conference due to the small increase in offenders.
- Any impact to the caseloads of state trial courts can be accommodated within existing judicial resources without an increased appropriation or reduced reversion.

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise". The signature is fluid and cursive, with the first name "Lucian" written in a larger, more prominent script than the last name "Geise".

Lucian D. Geise, Executive Director

/lsc